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87 NO. 1008

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

INEZ B. HAYES, PETITIONER

VS.

ORLIN ANSON, MARTHA C. ANSON; ANSON, DEPENBROCK & WILSON, "LAWYERS" P.C., an Oregon professional corporation,

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the district court erred in not, sua sponte, raising the issue of transfer to a court in which the action could have been brought pursuant to the mandate of 28 U.S.C. §1631, and whether the court of appeals has decided the issue of transfer and personal jurisdiction in a way in conflict with decisions of this court?

11. Whether the lower courts erred in refusing exercise of personal jurisdiction, in light of Nevada decision that jurisdiction can be based on a plaintiff's illness, recent rulings of this court, waiver of venue by one defendant and disbarment of another based on petitioner's cause of action demonstrating merit of her claim?

111. Whether the court of appeals erred in finding that some of petitioner's

ORS 12.110(4) applies to all claims against one's attorney, and the longer statutes of limitations for conversion of personal property and breach of contract are not available to a defrauded client?

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The petitioner, Inez Hayes, respectfully prays that a writ of certiorari issue to review the Memorandum Order of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on July 15, 1987.

OPINIONS BELOW

There has been no opinion rendered by the United States Court of Appeals for the Ninth Circuit or by the United States District Court for the District of Nevada. Petitioner's Complaint was dismissed in the district court for want of personal jurisdiction, CV-LV-85-036, HDM, on June 28, 1985, p. 5a, infra, and rehearing was denied on August 29, 1985, p. 10a, infra. The court of appeals issued a memorandum decision affriming the judgment of the court below, No. 85-2646, on July 15, 1987, p. 1a, infra, and dened rehearing without comment on an untimely filed petition for rehearing on September 2, 1987, p. 4a, infra.

JURISDICTIONAL STATEMENT

The memorandum of the Court of Appeals for the Ninth Circuit was entered on July 15, 1985 p. 1a, infra, with rehearing denied on September 2, 1987.

The Honorable Sandra O'Connor granted an extension of time to November 12, 1987 in which to file a petition for rehearing and granted a second extension of time to December 12, 1987.

The jurisdiction of the district court court was founded on 28 U.S.C. §1332(a) as plaintiff has been a citizen of Nevada since May, 1984 and all defendants were citizens of Oregon.

The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

STATE AND FEDERAL STATUTES INVOLVED

The provisions and statutes which are relevent to the determination of this case are: 28 U.S.C. §1332(a); 1406(a), p. 12a

28 U.S.C. 1631, text, p. 13a, infra, Nevada Revised Statutes 11.190(2)(c), p. 14a, 14.065(2)(b), p. 15a, and Oregon Revised Statutes 12.080(4), 16a, 120.81(1), 12.160 and 12.110(4), p. 17a.

STATEMENT OF THE CASE

Petitioner, a permanent resident of Nevada since May, 1984 brought a diversity action in the District Court for the District of Nevada on January 19, 1985, against her former Oregon attorney, Orlin Anson, and his Professional Corporation for negligence, malpractice, breach of fiduciary duty and conversion of funds, particularly a Cashier's Check for $21,196.71 which Orlin Anson deposited in his legal business account and spent for his own benefit [1].

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[1] Anson was indicted by an Oregon Grand Jury in Salem, Oregon on May 31, 1985 on one count of theft of said check. The Oregon trial judge noted that he "very reluctantly" granted a motion for acquittal.

Orlin Anson was permanently disbarred by Order of the Oregon Supreme Court entered on December 30, 1986 based on Inez Hayes's complaint. Summary of order is at p. 18a, infra.

Petitioner was a resident of Salem, Oregon when the claims arose. She hired Orlin Anson to handle her business affairs after her husband of fifty-five years died on August 9, 1981.

Unbeknownst to her children and her friends, Inez Hayes, then 76 years of age was suffering the effects of progressive hardening of the arteries, which caused occasional mental aberrations and progresive loss of eyesight and physical abilities.

Petitioner relied on Anson and trusted him implicitly.

Petitioner received the proceeds of a time certificate, the Cashier's Check, and Anson endorsed it and deposited it in his own account, without petitioner's knowledge. on June 2, 1982.

Petitiner discovered the loss in February, 1983 when she became aware she was no longer receiving interest payments.

She consulted a neighbor, one Charles Lacey, who contacted a Salem, Oregon lawyer

who suggested that Inez send a note to Anson terminating his services and requesting return of "personal property" in his possession. Lacey wrote the note as directed and Hayes signed it on February 23, 1983.

Lacey tried, unsuccessfully, to retain an attorney for Hayes and to have the local police and District Attorney investigate.

Lacey then advised Hayes to call her daughters, which she did. Lacey testified that he did not stay for the whole conversation and did not know that Hayes did not tell her daughter about this specific check. She had related incidents previously as to loss of other checks.

In May, 1984, Inez Hayes's daughter and son-in-law, concerned about Hayes's condition, traveled to Oregon and brought Inez Hayes to Las Vegas, Nevada to live with them.

Neither of Hayes's daughters knew about the conversion until May, 1984 when Lacey gave them a photocopy obtained from the bank.

The undersigned counsel, Janice Hayes, who is also petitioner's daughter, obtained photocopies from the bank which showed that the Cashier's Check had been deposited to Anson's account, styled "Orlin Anson, Attorney At Law, Business Account," which had Anson's law firm's address as the address to which statements were sent.

Counsel then wrote to the Marion County District Attorney who, in turn, forwarded the letter to the Oregon State Bar.

Anson failed to respond to letters and phone calls. Finally, on December 26, 1984, Anson wrote a letter wherein he admitted obtaining the Cashier's Check and suggested a repayment while maintaining that Inez Hayes had given him the check.

Counsel filed suit in Las Vegas on January 19, 1984, within the applicable statutes of limitation for both Oregon and Nevada.

Donald McEwen, Esq. filed a verified petition for permission to practice in the

district court wherein he stated that he had been retained by "the insurance company for the defendant lawyers." Martha Anson is not an attorney, but Mr. McEwen asserted that he filed the motion to dismiss on her behalf as well as for the attorneys.

Defendant Mainline Metal Works did not appear in the action, having filed a Chapter 11 petition in the United States Bankruptcy Court for the District of Oregon. Hayes has advised the bankruptcy court that she has no claim against Mainline.

Respondents' counsel, nevertheless, presented argument on Mainline's behalf in their brief and oral argument in the court of appeals.

The district court did not hold a hearing on defendants' motion to dismiss and did not address Hayes's suggestion that the case be transferred to the Oregon District Court, nor did the court mention 28 U.S.C. §1631 in its Order, p. 5a, infra.

Counsel had retained an Oregon attorney, Alan Gardner, Esq., in Eugene, Oregon for

Inez Hayessand paid him $500. He suggested that Hayes wait to see whether the district court dismissed the action.

The court of appeals affirmed the district court's dismissal for want of personal jurisdiction, 1a, and also did not mention 28 U.S.C. §1631.

The jurisdiction of the district court was invoked under 28 U.S.C. §1332(a). Hayes is a resident of Nevada and the only plaintiff; all defendants are or were at the time of filing, citizens of Oregon. The amount in controversy exceeds $10,000.

ARGUMENT

THE LOWER COURTS ABUSED THEIR DISCRETION IN NOT TRANSFERRING PURSUANT TO 28 U.S.C. §1631

Supreme Court Rule 17 enumerates various reasons for conducting a review of a lower court decision, among them (a) which indicates that a reason for consideration occurs when a court of appeals has rendered a decision in conflit with another court of

appeals on the same matter and (c) which indicates that the court will consider a petion when a federal court of appeals has decided a federal question in a way in conflict with applicable decisions of this court.

The district court did not deny or refuse plaintiff's suggestion that it transfer the action, as respondents implied. The district court erred, nevertheless, in failing to address the issue.under 28 U.S.C. § 1631, text at p. 13a, infra.

A district court must consider transfer even if is not requested by any party, Ingersoll Rand Co. v. U.S., 780 F.2d 79, 80 (D.C. 1983); Center for Nuclear Responsibility, et al. v. Nuclear Regulatory Committee, 787 F. 2d 935, 937, D.C. 1986.

The proper analysis is to determine first whether a want of jurisdiction exists; second, whether transfer would be in the interests of justice; third, to transfer the case. Squillacote v. United States, 747 F.

2d 432 (8th Cir. 1984), sub nom United States v. Squillacote, ____ U.S. ____, 105 S. Ct. 2021, 105 S.Ct. 2021, 85 L.Ed. 302 (1985), Hempstead County and Nevada County Project v. United States Environmental Protection Agency, 700 F. 2d 459, 462 (8th Cir. 1983).

In two recent cases, the United States Supreme Court vacated judgments and remanded actions to courts of appeals to be transferred pursuant to 28 U.S.C. 1631, Pacyna v. March, 106 S. Ct. 844; Ballam v. U.S., ____ U.S.__, 106 S. Ct. 222, ___ U.S.___, 106 S. Ct. 844.

This court declined to grant certiorari only in a very extreme case where the government failed to present the jurisdictional argument until after it had lost in the court of appeals on the merits, Squillacote, supra.

Even prior to the enactment of 28 U.S.C. 1631 in 1982, courts had found that except in unusual circumstances, transfer is the usual disposition of an action brought

even prior to the enactment of 28 U.S.C. §1631, p. 13a, infra, which mandates that a court raise the issue of transfer, sua sponte, courts found that except in extraordinary circumstances, transfer is the usual disposition of actions brought in the wrong venue, Orr v. United States, 174 F. 577, (2d Cir. 1949), and that the underlying rationale of decision under 28 U.S.C. 1406(a), p. 14a, is that dismissal for improper venue is a severe penalty that should only be invoked where there is harassment or some improper motive on the part of a plaintiff, Parham v. Edwards, 346 F. Supp. 968 (SD Ga. 1972).

Although a district court may theoretically have the discretion to choose between dismissal or transfer, the United States Supreme Court has clearly found that transfer, where feasible, should be granted except in extraordinary circumstances, Goldlawr v. Heisman, 369 U.S. 463, 82 S. Ct. 913, 8 L. Ed. 39 (1962).

In Reed v. Brown, 623 F. Supp. 342, (D.C. Nev. 1985), plaintiff's action was transferred because, if dismissed, it might be time-barred.

Courts have failed to order transfer only where a plaintiff has acted in bad faith, Hill v. U.S. Air Force, 795 F. 2d, where the plaintiff had a pending action on the same claims in the proper forum and had not exhausted all remedies.

In Wood v. Santa Barbara Chamber of Commerce, Inc., cited by the court of appeals, Wood, a California resident, purposely avoided filing suit in California, where he had already lost on the merits, filed a copyright action in Nevada where no act of infringement took place and no infringer lived, and filed filed the same suit against more than two hundred defendants in thirty other federal district courts, 705 F. 2d 1515 (9th) Cir. 1983).

Wood has no relevance to the instant action and is completely inapossite.

Hayes asserts that jurisdiction can be in Nevada, for the reasons set forth, infra, and offers the foregoing argument re transfer in the event that this court is not persuaded

II. IN VIEW OF A NEVADA DECISION THAT JURISDICTION CAN BE BASED ON A PLAINTIFF'S INABILITY TO TRAVEL, RECENT RULINGS OF THIS COURT, WAIVER OF VENUE BY ONE DEFENDANT, AND DISBARMENT OF ANOTHER BASED ON HAYES'S COMPLAINT, THIS ACTION SHOULD BE TRIED IN NEVADA.

Notwithstanding counsel's waiver of her claim that this action should be tried in Nevada, Hayes respectfully shows that her action should be tried in Nevada to avoid manifest injustice.

In Rigdon v. Bluff City Transfer & Storage Co., 649 F. Supp. 263, (D. Nev. 1986), The Nevada District Court extended the limits of personal jurisdiction to include those situations where a plaintiffs' physical condition would make travel to and litigation in another state difficult.

A similar situation applies to Hayes, who is both mentally and physically disabled

and now bedridden.

The wisdom of Hayes's daughters' decision to bring her to Nevada to live is demonstrated by the fact that she has undergone two emergency surgeries in two years, spending more than twenty days in the hospital each time.

This court has defined the limits of personal jurisdiction to find that a Michigan defendant who had never been in Florida could be haled into a Florida court, Burger King Corp. v. Rudzewicz, ___ U.S. ___, 105 S. Ct. 2174, 95 L. Ed. 2d 528, (1985), and emphatically rejected the notion that physical presence was a prerequisite for exercise of personal jurisdiction.

In this instance, Orlin Anson has visited Reno, Nevada many times and has been to Las Vegas.

Jurisdiction may be exercised with a lesser showing of contacts than would otherwise be required if considerations of reasonableness dictate, Burger King, supra,

at 2184, Calder v. Jones, 465 U.S. 783, 789-90, 104 S. Ct. 1482, 1487, 79 L.Ed. 804 (1984).

Nevada is entitled to consider the interest of the interstate judicial system in obtaining the most efficient resolution of controversies, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286,292, 100 S. Ct. 559, 564, 62 L.Ed. 2d 490(1980).

If this action were remanded to the Nevada court, Hayes could undoubtedly prevail on a summary judgment motion, whereas if it is tried in Oregon, judicial resources would be wasted in litigation as to whether conversion constitutes legal malpractice.

The Nevada Supreme Court found that Nevada's long-arm statute, N.R.S. 14.065, p. 15a, infra. can reach the "outer limits of federal due process," Galatz v. Eighth Judicial Court, 683 P. 2d 26, 28 (Nev. 1984), cited in Reed, supra. See Laxalt v. McClatchy, 622 F. Supp. 737 (D. Nev.

1985).

The court of appeals did not address the issue raised by Hayes in her Opening Brief that defendant Martha Anson did not appear in the district court.

Venue is a privilege personal to each defendant, which can be waived, Hoffman v. Blaski, 363 U.S. 335, 80 S. Ct. 1084, 4 L. Ed. 2d 1954(1960), and her right to object to improper venue was voided by failure to object, Libby, McNeill v. City Nat. Bank, 592 F. 2d 504, 510 (9th Cir. 1978).

The other defendants could not object on Martha Anson's behalf, Camp v. Gress, 250 U.S. 308, 39 S.Ct. 478, 63 L.Ed. 997.

It can not be seriously disputed that Hayes had a valid and meritorious claim against her Oregon Attorney, Orlin Anson and his law firm. The Oregon State Bar conducted proceedings, at which neither Hayes nor her daughters testified, and found from independent sources that Anson had converted Hayes's check, p. 18a.

two year limitation which accrues when the person discovers the injury or should have, ORS 12.110(1) and ORS 12.110(4), 17a.

Regardless of when Hayes could be determined to have discovered the injury, her claims would be time barred under these statutes, as the conversion took place on June 1, 1982, the day on which Orlin Anson deposited her Cashier's Check to his attorney's business account.

The Oregon Court of Appeals established that the statute for professional malpractice, ORS 12.110 with a two-year limitation, applied to attorneys, United States National Bank of Oregon v. Davies, 274 Or. 663, 548 P. 2d 966 (1976).

Inasmuch as every fiduciary relationship is based on an implied or express contract and that claims against attorneys usually also involve a tort, the Nevada Supreme Court found that all claims are encompassed in one statute with a four-year limitation, NRS 11.190(2)(c), p. 14a, infra,

Sorenson v. Pavlikowski, 94 Nev. 440, 581 P. 2d 861 (1978).

Oregon Revised Statute 12.080(4), which concerns conversion, makes it clear that actions mentioned in ORS 12.110, two-year statute, are except from 12.080 which has a six-year statute, and thus ORS 12.080 (4) is inapplicable, p. 16a.

A breach of contract is not an "injury to personal property," Teren v. Howard, 322 F 2d 949 (1963). ORS 12.080(4)'s six-year limitation runs from the time of conversion, Sheppard v. Yocum, 10 Or. 402, 403 (1882) and there is no tolling.

ORS 12.080(4) with a six year limitation, does not apply to an action for failure to properly perform professional services, Bales for Food, Inc. v. Poole, 246 Or. 253, 424 P. 2d 892, (1967). Schedlerv. First State Bank, 02 Or. 33, 179 P. 671, fraudulent misrepresentation in realty contract; U.S.National Bank, supra; Melgard v. Hanna, Or. App. 607 P. 2d 795,

lack of due care by lawyer and real estate broker; Garey v. Hayes, 248 Or. 444, 450, 434 P. 2d 331 (1967), Murray v. Lamb, fraudulent inducement to lend money, 174 Or 239 148 P. 2d 797, 801; Lindermeier v. Walker, Or. 538 P. 2d 1296 (1975), actions against real estate broker for intentional failure to obtain best sales price are all in accord.

It is likely that if Hayes must file a new action in Oregon, that the respondents' malpractice insurer, not a party to this action, will allege that all of Hayes' claims fall within the two-year statute of limitations of ORS 12.110(4).

Respondents' counsel, however, argued in the opposite manner at oral argument that Oregon does not have a "catch-all" statute governing all claims against attorneys.

Hayes will be denied all redress on her proven meritorious claim. The Oregon State Bar Client Security Fund requires that a defrauded client obtain a civil judgment or that there is a criminal conviction, that

she prove she has exhausted all remedies to collect on a civil judgment and then find an Oregon lawyer who will present her claim to the Fund without charging any fee. Any recovery is "a matter of grace and not of right."

Anson's acquittal of the theft charge precludes any criminal conviction.

Counsel has written to the Oregon IRS Director, the United States Attorney and the Oregon Taxation Department asking that they review Anson's 1983 income tax returns to see if he failed to include the converted funds as income, and has received no significant response.

CONCLUSION

The petitioner prays that a writ of certiorari be issued to review the judgment of the court of appeals which conflicts with this court's decisions in Pacyna v. March and Ballam v. U.S. regarding transfer if jurisdiction can not be found in Nevada, and with Burger King, which has expanded due process to allow courts to exercise personal jurisdiction where equitable con-

so require. The court of appeals' memorandum also conflicts with the Nevada District Court's decision in Rigdon, supra, that personal jurisdiction can be found where the plaintiff is unable to travel.

In the instant case, the petitioner is now a 82 year old woman who has never previously been involved in any lawsuit. She is nearly blind, senile and unable to walk.

Hayes has a meritorious claim but as set out heretofore, she has been deprived of her right of redress and will never be able to obtain relief unless this court intervenes.

Her former attorney has profited from his own wrongdoing. All of Hayes's claims are now time-barred in Oregon. Respondents' insurer will not pay as it asserts "knowingly wrongful" conduct is excluded from coverage.

Respectfully submitted,

JANICE M. HAYES, ESQ.
Attorney for INEZ B. HAYES,
Petitioner

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

INEZ B. HAYES, Plaintiff- Appellant, v. ORLIN R. ANSON, et al., Defendants-Appellees.	N0. 85-2646 D.C. No. CV-LV-85-036-HDM **MEMORANDUM*** FILED JUL 15 1987

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding
Argued and Submitted
March 9, 1987; San Francisco, California

Before: FLETCHER, BEEZER, and THOMPSON, Circuit Judges

This diversity action was filed by Inez Hayes against her former attorney, Orlin Anson; Anson's wife, Martha Anson; and Anson's law firm, Anson, Depenbrock and Wilson, P.C. (collectively "Anson"), for malpractice, fraud, negligence, breach of contract, and conversion of funds. Hayes appeals from the district court's grant of Anson's motion to dismiss for lack of personal jurisdiction. We affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

FACTS

Hayes, now a resident of Nevada, lived in Salem, Oregon, when Anson's alleged acts of malpractice took place. Hayes retained Anson to handle her financial and legal matters following the death of her husband. Hayes alleges, among other things, that Anson deposited to his own checking account a $21,196.71 check payable to Hayes.

Hayes brought this action in the Federal District Court for the District of Nevada. Anson moved to dismiss the case for lack of personal jurisdiction, asserting that "All of the acts complained of, and all of the contacts between plaintiffs and these moving defendants occurred in the State of Oregon at the time the plaintiff was a resident of that state." Hayes claimed that Anson's letters to Hayes and to her attorney in Nevada were sufficient to satisfy due process consideration. The Nevada district court granted Anson's motion and Hayes appeals. Hayes now concedes that the Nevada court lacked personal jurisdiction over Anson, but argues that the district court abused its discretion by dismissing her case rather than transferring it to Federal District Court for the District of Oregon.

DISCUSSION

"The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). Hayes argues under this section that it would be "in the interest of justice" to transfer her case to the district court in Oregon rather than dismiss it. She points out that if she is required to file her suit anew in Oregon, some of her claims will be time-barred by the applicable Oregon statutes of limitations.

An action for legal malpractice, fraud, or negligence, under Oregon law, must be commenced within two years of its accrual. Or. Rev. Stat. § 12.110(1); United States National Bank of Oregon v. Davies, 274 Or. 663, 548 P.2d 966 (1976). The Oregon statute of limitations for a breach of contract or a conversion action is six years. Or. Rev. Stat. 12.080. Thus, although the Oregon statute of limitations may have run

on Hayes' claims for malpractice, negligence and fraud (it is unclear exactly when the clock began running against these claims), her breach of contract and conversion claims are not time-barred.

The district court's decision whether to dismiss or transfer under 28 U.S.C. § 1406(a) is reviewed for abuse of discretion. Cook v. Fox, 537 F.2d 370, 371 (9th Cir. 1976). The district court did not abuse its discretion in refusing to transfer Hayes' case to the United States District Court for the District of Oregon. In Hayes' Memorandum in Opposition to Defendants' Motion to Dismiss for Want of Personal Jurisdiction she argued that she would be severely disadvantaged if the case had to be tried in Oregon because she is nearly eighty years old and in ill health. It was for these reasons that Hayes purposely avoided filing the case in Oregon. But these reasons fail to demonstrate that justice would be served by transferring the action. See Wood v. Santa Barbara Chamber of Commerce, Inc., 705 F.2d 1515 (9th Cir. 1983), ("Justice would not have been served by transferring Wood's claims back to a jurisdiction that he purposefully sought to avoid through blatant forum shopping."), cert. denied, 465 U.S. 1081 (1984).

Hayes' Motion to Strike Appellees' Supplemental Excerpt of Record and Hayes' Motion to Supplement the Docket Sheet Entries Nunc Pro Tunc are DENIED.

The District court's order dismissing Hayes' action rather than transferring it to the United States District Court for the District of Oregon is AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

INEZ B. HAYES,

Plaintiff-Appellant,

v.

ORLIN R. ANSON, et al.,

Defendants-Appellees

No. 85-2646
D.C.# CV-LV-85-036-HDM

ORDER

FILED July 15 1987

Before: FLETCHER, BEEZER, and THOMPSON, Circuit Judges

Appellant's petition for rehearing is denied.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

INEZ B. HAYES,

Plaintiff,

vs.

ORLIN R. ANSON, et al.,

Defendants

_____/

ENTERED

July 1, 1985

CIV-LV-85-036 HDM

ORDER

Plaintiff alleges in her complaint that (1) following the death of her husband she retained defendant Orlin Anson (Anson), an attorney licensed to practice law in the State of Oregon who resides in Oregon to handle financial and legal matters for her; (2) defendants Anson, and Anson, Depenbrock & Wilson, an Oregon law firm, represented that they were capable of probating the estate of her husband; (3) defendant Anson negligently and fraudently performed services which resulted in the loss to plaintiff of considerable sums of money; and

(4) defendant Anson persuaded plaintiff to purchase unnecessary safety devices for her home in Oregon from defendant Mainline Metal Works, a closely held corporation of defendants Anson and his wife Martha who also resides in Oregon. As a result of these actions, plaintiff seeks damages for conversion, negligence, fraud, breach of contract and legal malpractice.

Plaintiff discharged defendant Anson in February of 1983, and subsequently moved to Nevada in May of 1984. Plaintiff alleges she discovered the alleged misconduct of defendant Anson on February 23, 1984.

Plaintiff invokes jurisdiction before this court under 28 U.S.C. §1332.

Defendants Orlin R. Anson, Martha C. Anson and Anson, Depenbrock & Wilson, pursuant to Fed. R. Civ. P. 12(b)(2), have made a Motion to Dismiss this cause of action against them on the ground that this court lacks personal jurisdiction over them. Points

and authorities and affidavits have been filed by these defendants and the plaintiff.

The Ninth Circuit has developed a two-step test to determine if the court has authority to assert personal jurisdiciton over a nonresident defendant. The first step is to determine whether the relevant state's long-arm statute permits jurisdiction, and the second step is to determine whether exercise of jurisdiction is consistent with due processs. Greenspun v. Del E. Webb Corp., 634 F. 2d 1204 (9th Cir. 1980)

Due process requires that a nonresident defendant have certain minimum contacts with the forum so that the suit does not offend traditional notions of fair play and substantial justice.

International Shoe v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945). These contacts may result in either general or limited jurisdiction by the court. Where a defendant has "substantial" or "continuous

systematic" contacts with the forum, a court may have general personal jurisdiction, even if the cause of action is unrelated to the defendant's forum activities, Cubbage v. Merchent, 744 F. 2d 665, 667 (9th Cir. 1984). If defendants's activities do not subjest him to general jurisdiction, personal jurisdiction for the limited purpose of litigating the cause of action then must depend on the following: (1) The nonresident defendant must do some act or conssumate some transaction with the forum or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws, (2) the claim must be one which arises out of or reresults from the defendant's forum-related activities. Data Disc, Inc. v. Systems Tech. Assoc., Inc., 557 F. 2d 1280, 1287 (1977). Due process further requires that the defendant's conduct and connection with the forum must be such that a defendant should

reasonably anticipate being "haled into court there." World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S.Ct. 559 (1980).

In Nevada, jurisdiction over a nonresident defendant is conferred by NRS 14.065 if that person commits a tortious act within the state or transacts any business within the state. Shapiro v. Pavilikowski, 654 P. 2d 1030 (Nev. 1982).

Plaintiff in her complaint has not alalleged that any of he acts about which she complains occurred in the State of Nevada. In addition, plaintiff in her complaint has not alleged that any of the defendants had any contact of any type with her in the State of Oregon. In her Memorandum in Opposition to defendants' Motion to Dismiss, plaintiff refers to certain exchanges of correspondence and telephone calls between her attorney and the defendant Anson but none of these matters have been set forth in her complaint as grounds for relief in this jurisdiction.

Therefore, it is clear on the basis of

the issues framed in plaintiff's complaint that for this court to invoke jurisdiction over the defendants would not comport with due process.

It is therefore ORDERED that defendants' Motion to Dismiss be granted. Plaintiff's Motion to Strike is without merit and is denied.

DATED this 27th day of June, 1985.

Howard McKibben

United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

INEZ B. HAYES,

Plaintiff,

vs.

ORLIN R. ANSON, et al.,

Defendants.

/

CV-LV-85-36 HDM

ENTERED

AUG 30, 1985

ORDER

The court having considered the plaintiff's Motion to Amend or Alter Order of this court entered July 1, 1985, and being fully advised,

IT IS ORDERED that plaintiff's Motion to Amend or Alter Order be and hereby is denied.

DATED this 29th day of August, 1985.

UNITED STATES DISTRICT JUDGE

28 U.S.C. §1406(a)

(a) The district court of a district in which is filed a case layoing venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.

(b) Nothing in this chapter shall impair the jurisdiciton of a distric court or of any matter involving a party who does not interpose timely and sufficient objection to the venue.

(c) . . . .

28 U.S.C. §1631

Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

NEVADA REVISED STATUTE 11.190(c)

Actions other than those for the recovery of real property, unless further limited by specific statute, can only be commenced as follows:

* * *

2. Within four years:

* * *

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

NEVADA REVISED STATUTE 14.065(2)(b)

Any person who, in person or through an agent or instrumentality, does any of the acts enumerated in this subsection thereby submits himself and, if a natural person, his personal representative to the jurisdiction of the courts of this state as to any cause of action which arises from:

* * *

(b) Committing a tortious act within this state;

* * *

3. Only causes of action arising from these enumerated acts may be asserted against a defendant in an action in which jurisdiction over him is based on this section.

OREGON REVISED STATUTE 12.080

Action on certain contracts or liabilities.

(1) An action upon a contract or liability, express or implied, excepting those mentioned in ORS 12.070 and 12.110 and except as otherwise provided in ORS 72.7250.

* * *

(4) An action for taking, detaining or inuring personal property, including an action for the specific recovery thereof,

shall be commenced within six years. (Amended by 1957 c.373§, 1971 c. 726 §396; 1973 c 163 §1.

[Emphasis added]

OREGON REVISED STATUTE 12.110

Determination of period in action for fraud or deceit; injuries to person from profesional malpractice.

(1) An action for . . . any injury to the person or rights of another, not arising on contract, and not especially enumerated in this chapter, shall be commenced within two years; provided that in an action at law based upon fraud or deceit, the limitation shall be deemed to commence only from the discovery of the fraud or deceit.

* * *

(4) An action to recover damages for injuries to the person arising from any medical, surgical or dental treatment, omission or operation shall be commenced within two years from the date when the injury isfirst discovered or in the exercise of reasonable care should have been discovered.

SUPREME COURT

DEC 30 1986

IN THE SUPREME COURT

OF THE STATE OF OREGON

IN RE COMPLAINT AS TO THE CONDUCT OF ORLIN R. ANSON,

Accused.

(OSB 85-29; S33042)

In Banc*

On review from the decision of the trial panel of the Disciplinary Board of the Oregon State Bar under Rule 10.1.

Submitted on the record and brief of the Oregon State Bar December 3, 1986.

. . .

No appearance by the Accused.

PER CURIAM

Accused is disbarred. Oregon State Bar awarded costs.

*Gillette, J. not participating.

5911M